

## SUMMARY SHEET

### I. Description of Item:

This resolution formally sets a policy for establishing the amount to be charged as in lieu of tax payments for properties within Shelby County for qualified housing developments under TCA 67-5-207 (a) (2) Properties under this statute receive federal funding in order to provide housing for the elderly, disabled and homeless as defined by federal laws and regulations. This resolution proposes that these qualified developments pay annually to Shelby County Government through the County Trustee's Office an exempt property in lieu of payment equal to \$5.00 per unit per month. This recommendation complies with the requirement that the amount paid not be in excess of the cost of providing services and keeps the annual payment at a reasonable level for these developments.

Consideration has been given in this process to the provision of needed housing services for populations within our community that require assistance and accommodation in securing adequate housing.

### II. Source and Amount of Funding:

Recoupment of Costs Agreement will reimburse Shelby County for cost of providing improvements, facilities and services to Low Cost Housing §207 PILOT concurrent with State Board of Equalization ("SBOE") approval of tax exempt status.

### III. Contract Items:

Tenn. Code Ann. §67-5-207(a)(2) requires any qualified project receiving a tax exemption to pay any local government for improvements, facilities and services rendered. Governments are limited to charging no more than the actual costs of providing the improvements, facilities and services. The project must be exempt from federal taxes under the Internal Revenue Code, and qualify to provide housing under federal HUD, HCD, McKinney-Vento Homeless Act, HOME Investment Partnerships Program, or the state-funded Housing Opportunities (HOUSE) Program. The SBOE staff has deemed the initial cost determination solely a local matter by language of the statute.

### IV. Additional Information Relevant to approval of this item:

Previously, the City of Memphis and Shelby County, by inter-government agreement, charged this type housing project a total fee of Ten (\$10) Dollars per unit per month divided equally at Five (\$5) Dollars each City and County. The City of Memphis delegated its authority to enter into these agreements to the City's HEHFB by Item 57, Resolution on December 4, 2007. The City also unilaterally changed the methodology and rate of cost to 25% of the amount that the ad valorem taxes would have been. The 25% calculation was adopted from a rate charged by Davidson County Metro Government for this type project. The Board of Commissioners of Shelby County adopted the 25% of normal taxes rate SOLELY on one project at its September 22, 2008 meeting based upon the urgent request of Shield, Inc to approve the disputed cost

allocation in order for Shield, Inc to meet a funding deadline with the HOME Loan Program. The Board of Commissioners later approved Bearman-Golden Gardens, Inc. and rescinded and reassessed costs to Shield, Inc at \$5 per unit per month as a "going-forward" policy, pending additional information and review.

Projects must qualify and remain eligible by complying with state and federal discrimination laws, or may be revoked under T.C.A. §67-5-212.

The Administration recommends approval of this resolution.

ITEM # \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

COMMISSIONER \_\_\_\_\_

APPROVED BY: THOMAS WILLIAMS

RESOLUTION TO CLARIFY POLICY OF ASSESSING FIVE (\$5) DOLLARS PER UNIT PER MONTH TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICES TO TAX EXEMPT PROPERTIES UNDER Tenn. Code Ann. 67-5-207, et seq. SPONSORED BY COMMISSIONER JAMES M. HARVEY

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**WHEREAS**, Tenn. Code Annotated Section 67-5-207 authorizes a tax exemption for properties of Tennessee not-for-profit corporations either financed or funded under several federal housing initiatives, including, Section 202 of the National Housing Act of 1959 (elderly)], Section 811 Housing Act (Disabled) or McKinney-Vento Homeless Assistance Act (Homeless and Shelter Care), or under the HOME Investment Partnership Program (focus on community housing development corp.'s and housing education), so long as these properties are used to house low income elderly, handicapped, or homeless persons, and so long as such properties comply with the provisions of those federal statutes; and

**WHEREAS**, T.C.A. Section 67-5-207(a)(2) authorizes local governments to recoup the costs of providing essential services to these not-for-profit housing corporations by requiring payments in lieu of real property taxes for the property granted an exemption under this Section by the State of Tennessee Board of Equalization; and limits the amount of recoupment not to exceed the estimated costs incurred by municipalities or counties to provide those improvements, facilities and/or services to the exempt property; and

**WHEREAS**, prior agreements of this type were entered into jointly by the City of Memphis, Shelby County and the exemption applicant, and by resolution adopted and approved on December 4, 2007, the City Council of the City of Memphis, Tennessee delegated its authority to enter similar agreements, pursuant to T.C.A. Section 67-5-207, et seq. to the Health, Educational and Housing Facility Board of the City of Memphis (the "City"), said delegation conditioned upon the exemption applicant paying twenty-five (25%) of the ad valorem taxes that would have been due, exceeding the amount charged by Shelby County; and

**WHEREAS**, the Board of Commissioners adopted a Resolution, Item No. 25 on September 22, 2008 approving an Agreement between Shield, Inc. and Shelby County, Tennessee whereby Shield, Inc. agreed to pay 25% of the ad valorem taxes that would have been due on the subject property in order for County to recoup its costs for improvement, facilities and services provided to Shield, Inc.; and

**WHEREAS**, the Board of Commissioners of Shelby County adjusted the cost of recoupment on a similar project, and reinstated the rate of recoupment to Five (\$5) per unit per month in Resolution for Item No. 21 at the October 6, 2008 meeting, and later reduced the recoupment amount on the Shield, Inc. Agreement to Five (\$5) per unit per month.

**WHEREAS**, the purpose of this Resolution is to clarify the policy for recoupment of costs for Improvements, Facilities and Services to T.C.A, 67-5-207 exempt properties.

**WHEREAS**, Tenn. Code Ann. §67-5-207(a)(2) limits the assessment of recoupment of costs to exempt housing developments with more than twelve (12) units, and states:

(2) In lieu of any taxes for which a property is granted exemption under this section, the owners of projects that exceed twelve (12) units shall agree to make payments to any county, municipality, metropolitan government, or district for improvements, facilities or services rendered by the county, municipality, metropolitan government or district. In no event shall such payments exceed the estimated cost to provide improvements, facilities, or services so furnished, and in no event shall such payments be required from public housing authorities operating under title 13, chapter 20 (public housing authorities).

**WHEREAS**, the Tennessee State Board of Equalization reviews application and grants exemption based on qualifying federal criteria, subject to the applicant having executed a Cost Recoupment Agreement, or low cost housing §207 PILOT, with local governments.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF SHELBY, TENNESSEE, That

1. The payment Agreement referred to in HUD documentation and designated by the State Board as a "Payment in Lieu of Taxes" (or PILOT) for low cost housing, may be designated alternatively by the Board of County Commissioners as either an Agreement to Recoup the Cost of Providing Improvements, Facilities and Services, or "§207 Low cost Housing PILOT."

2. Beginning with the effective date of the tax exemption for the Property granted by the State Board of Equalization, the housing project shall pay to the County taxing authority for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) an amount in lieu of real and personalty property taxes equaling Five (\$5) Dollars per unit per month as of the effective date of the stated in the Agreement.

3. Within thirty (30) days of the granting of the tax exemption, the exempt property shall pay to the County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

4. Subject to Paragraph 5 below, the recoupment of costs required by this agreement are to be made on or before February 28th of each year. Any recoupment, or payments in lieu of tax, not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

5. The recoupment of costs provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Section 67-5-207, or any substitute state statute with similar provisions.

6. Shelby County, Tennessee hereby acknowledges that the County's costs to provide improvements, facilities and/or services to the exempt Property are hereby deemed to be Five (\$5) Dollars per month per unit. However, any Agreement approved pursuant to this Resolution shall acknowledge and provide that the costs of recoupment may become greater than \$5 per month per unit, and may be changed after public hearing to determine the current costs of recoupment which changes the policy herein. Any Agreement shall also acknowledge and provide that such costs may increase substantially during the time the Property is entitled to exemption from real and personal property taxes. In consideration of the agreement by the County to accept these payments in lieu of real property tax, and in order to lessen the burden on the County of providing improvements, facilities or services, the exempt housing property shall cooperate fully with the County to re-negotiate the terms of this agreement every three (3) years from the date of this agreement.

7. The parties agree that the recoupment of costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the County in the future.

8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

9. The Board of County Commissioners shall review each application for a §207 Low Cost Housing PILOT, or may designate an administrative official, agency or any designated and constituted "committee" to review and approve Recoupment Agreements.

\_\_\_\_\_  
A C Wharton, Jr., Shelby County Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## **Attachment 1: OTHER RELEVANT REGULATIONS FOR HUD FUNDED HOUSING**

### **CFR § 891.100 Purpose and policy.**

(a) Purpose. The Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities provide Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811), respectively, for housing projects serving elderly households and persons with disabilities. Section 202 projects shall provide a range of services that are tailored to the needs of the residents. Owners of Section 811 projects shall ensure that the residents are provided with any necessary supportive services that address their individual needs.

(b) General policy.

(1) Supportive Housing for the Elderly. A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 202 (12 U.S.C. 1701q(b)).

(2) Supportive Housing for Persons with Disabilities. A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 811 (42 U.S.C. 8013(b)).

(c) Use of capital advance funds. No part of the funds reserved may be transferred by the Sponsor, except to the Owner caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a commitment for capital advance funding.

(d) Amendments. Subject to the availability of funds, HUD may amend the amount of an approved capital advance only after initial closing has occurred. SOURCE: 61 FR 11956, March 22, 1996, unless otherwise noted. AUTHORITY: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

The purpose of the McKinney-Vento Act is to provide temporary and permanent housing for Emergency Shelter Care and Emergency Food; Supportive Housing and Safehaven for the Homeless; provided that the local government or other grantee must provide Matching Funds (CFR §576.51).

### **§ 576.1 Applicability and purpose.**

This part implements the Emergency Shelter Grants program contained in subtitle B of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11371-11378). The program authorizes the Secretary to make grants to States, units of general local government, territories, and Indian tribes (and to private nonprofit organizations providing assistance to homeless individuals in the case of grants made with reallocated amounts) for the rehabilitation or conversion of

buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses and essential services in connection with emergency shelters for the homeless, and for homeless prevention activities. The program is designed to be the first step in a continuum of assistance to enable homeless individuals and families to move toward independent living as well as to prevent homelessness. [61FR51548,Oct.2,1996] AUTHORITY:42U.S.C.3535(d);11376.

#### **§ 583.1 Purpose and scope.**

(a) General. The Supportive Housing Program is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act) (42 U.S.C. 11381-11389). The Supportive Housing program is designed to promote the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness, and to promote the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(b) Components. Funds under this part may be used for:

- (1) Transitional housing to facilitate the movement of homeless individuals and families to permanent housing;
- (2) Permanent housing that provides long-term housing for homeless persons with disabilities;
- (3) Housing that is, or is part of, a particularly innovative project for, or alternative methods of, meeting the immediate and long-term needs of homeless persons; or
- (4) Supportive services for homeless persons not provided in conjunction with supportive housing.

[61 FR 51175, Sept. 30, 1996]; AUTHORITY: 42 U.S.C. 11389 and 3535(d).

#### **24 C.F.R. § 891.115--Notice of funding availability.**

Following an allocation of authority under § 891.110, HUD shall publish a separate Notice of Funding Availability (NOFA) for the Section 202 Program of Supportive Housing for the Elderly and for the Section 811 Program of Supportive Housing for Persons with Disabilities in the Federal Register. The NOFAs will contain specific information on how and when to apply for the available capital advance authority, the contents of the application, and the selection process. SOURCE: 61 FR 11956, Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f,3535(d),&8013.

#### **24 C.F.R. § 891.150 Operating cost standards.**

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for the elderly or for persons with disabilities in each field office, and shall adjust the standard annually based on appropriate indices of increases in housing costs such as the Consumer Price Index. The operating cost standards shall

be developed based on the number of units. However, under the Section 811 Program and for projects funded under §§ 891.655 through 891.790, the operating cost standard for group homes shall be based on the number of residents. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project. Source: 61 FR 11956, Authority 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

#### **§ 891.170 Repayment of capital advance.**

(a) Interest prohibition and repayment. A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing project remains available for very low-income elderly families or persons with disabilities, as applicable, in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a note and mortgage, use agreement, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any project under this part is prohibited, unless HUD gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer to a private nonprofit corporation, consumer cooperative (under the Section 202 Program), a nonprofit organization (under the Section 811 Program), or an organization meeting the definition of “mixed-finance owner” in § 891.805 of this part, is part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income elderly persons or persons with disabilities, as applicable, on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

[70 FR 54209, Sept. 13, 2005]; SOURCE: 61 FR 11956, March 22, 1996, unless otherwise noted. AUTHORITY: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

#### **§ 891.135 Amount and terms of capital advances.**

(a) Amount of capital advances. The amount of capital advances approved shall be the amount stated in the notification of fund reservation, including any adjustment required by HUD before the final closing. The amount of the capital advance may not exceed the appropriate development cost limit.

(b) Estimated development cost. The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under § 891.120. Source: 61 FR 11956. Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.



## HOME Program Summary

The HOME INVESTMENT PARTNERSHIP ACTS authorizes and incorporates community housing development agencies (CHDO's). Enacted as Title II of the Cranston-Gonzalez National Affordable Housing Act (24 CFR, Part 92), HOME provides formula grants to States and localities that communities use-often in partnership with local nonprofit groups-to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-income people.

HOME is the largest Federal block grant to State and local governments designed exclusively to create affordable housing for low-income households. Each year it allocates approximately \$2 billion among the States and hundreds of localities nationwide. The program was designed to reinforce several important values and principles of community development:

### Types of Assistance

HOME funds are awarded annually as formula grants to participating jurisdictions. HUD establishes HOME Investment Trust Funds for each grantee, providing a line of credit that the jurisdiction may draw upon as needed. The program's flexibility allows States and local governments to use HOME funds for grants, direct loans, loan guarantees or other forms of credit enhancement, or rental assistance or security deposits.

### Eligible Grantees

States are automatically eligible for HOME funds and receive either their formula allocation or \$3 million, whichever is greater. Local jurisdictions eligible for at least \$500,000 under the formula (\$335,000 in years when Congress appropriates less than \$1.5 billion for HOME) also can receive an allocation. Communities that do not qualify for an individual allocation under the formula can join with one or more neighboring localities in a legally binding consortium whose members' combined allocation would meet the threshold for direct funding. Other localities may participate in HOME by applying for program funds made available by their State. Congress sets aside a pool of funding, equivalent to the greater of \$750,000 or 0.2 percent of appropriated funds, which HUD distributes among insular areas.

### Eligible Activities

Participating jurisdictions may...us[e] HOME funds to provide home purchase or rehabilitation financing assistance to eligible homeowners and new homebuyers; build or rehabilitate housing for rent or ownership; or for "other reasonable and necessary expenses related to the development of non-luxury housing," including site acquisition or improvement, demolition of dilapidated housing to make way for HOME-assisted development, and payment of relocation expenses. PJs may use HOME funds to provide tenant-based rental assistance contracts of up to 2 years if such activity is consistent with their **Consolidated Plan** and justified under local market conditions. This assistance may be renewed. Up to 10 percent of the PJ's annual allocation may be used for program planning and administration.